

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 261 of 2023**

IN THE MATTER of an application under section 169 Part XXIV of the Land Transfer Act, 1971 for an Order for immediate vacant possession.

**BETWEEN** : **RAJESH PRASAD** of Naselai Feeder Road of Nausori, Retired.

**PLAINTIFF**

**A N D** : **RAJ KUMAR** and any other persons residing on the said land together with all his immediate family residing at off Bidesi Road, Naselai Road, Carpenter.

**DEFENDANT**

**Counsel** : Mr. Amrit. Chand for the Plaintiff  
: Ms. Lydia. Lazel for the Defendant

**Date of Hearing** : 26.6.2024  
**Date of Judgment** : 25.07.2025

**JUDGMENT**

*(Application seeking Vacant Possession pursuant to S.169 of the [Land Transfer Act Cap 131](#))*

**INTRODUCTION**

1. The Plaintiff by their Originating Summons dated 28<sup>th</sup> August 2023, is seeking that the Defendant to show cause on why the Defendant should not give up possession to the above-named Plaintiff over the Property described as Crown Lease Number, 22598, being at Bidesi Road, Naselai Road, (the property) of which the Plaintiff is registered Lessee/Proprietor. The Defendant, RAJ KUMAR, and together with all other occupiers of the property do give immediate vacant possession of the Property to the Plaintiff.
2. The Defendant had been unlawfully residing on the said property without the consent and authority of Plaintiff whereby on several occasions have asked the Defendant and his family who all are occupying the portion of the said property to vacate however, they all have refused to adhere.

3. The Defendant responded with the Affidavit In Reply of RAVINIT RITESH RAJ sworn on 8<sup>th</sup> February, 2024.
4. The Plaintiff then made an application for Substitute Service which was granted by the Court.
5. The Affidavit of Service of Suresh Prasad dated 8<sup>th</sup> September, 2023 was filed on 13<sup>th</sup> September, 2023.
6. There are 4 (Four) affidavits filed before the Court:
  - a. Affidavit in Support of Rajesh Prasad sworn on 28<sup>th</sup> August, 2023 (**“Plaintiffs Affidavit”**);
  - b. Affidavit in Reply of Ravinit Ritesh Raj, Defendant’s son sworn on 29<sup>th</sup> December, 2023(**“Defendant’s son Affidavit”**);
  - c. Affidavit in Reply of Rajesh Prasad sworn on 8<sup>th</sup> February, 2024 (**“Plaintiff’s Affidavit”**).
  - d. Supplementary Affidavit of Ravinit Ritesh Raj, Defendant’s son sworn on 29<sup>th</sup> May, 2024 (“Defendant’s son Affidavit”)

#### **AFFIDAVITS OF THE PARTIES**

7. **AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS dated - 28<sup>th</sup> August, 2023**

“I, RAJESH PRASAD of Naselai Feeder Road, Bau Road, Nausori, Retired, make oath and say as follows: -

1. THAT I am the Plaintiff in this action, and I'm duly authorized to swear this affidavit on my behalf.
2. THAT I depose to the facts which is within my knowledge, save and except where it is stated to be on information and belief, I verily believe that matter deposed is true and accurate to the best of my knowledge, information and belief.
3. THAT I depose this Affidavit in Support of my application by which I seek orders as per the Originating Summons filed herein based on the grounds expressed in this Affidavit.
4. THAT I am the current Registered Proprietor and or Lessee for the Crown Lease Number.22598, situated at of Bidesi Road, Naselai Road, Nausori. (I annex hereto and mark as "Annexure 1" is the copy of the Crown Lease No.22598).
5. THAT the said lease was initially owned by my mother who had then transferred the said Lease on my name.
6. THAT the Defendant had been unlawfully residing on the said property without the consent and my authority where I had on several occasions have asked the Defendant and his family who all are occupying the portion of the said property

to vacate however, they all have refused to adhere to my notice and respect my words.

7. I then through my lawyers on 30<sup>th</sup> August 2022 issued the eviction notice to the Defendant however, the Defendant had failed to deliver the vacant possession. (I annex hereto and mark as "Annexure 2" is the copy of the notice).
  8. THE Defendant and his family were temporarily given the small space to occupy from the said land by my mother for about a year or two until Raj Kumar gets a suitable place to move out however, he requested a further time due to his daughter's wedding which was allowed by my mother, however, the Defendant did not move out and continued to occupy the said portion of the land.
  9. THE Defendant had not paid any money for the said portion of the land or had not paid any money to buy the said land, and neither is there any documentation which I am aware of or brought to my attention by my late mother that the Defendant has entered into an Agreement with her to purchase the land or Defendant has paid for the said land.
  10. THAT Defendant has failed to respond to my lawyers to give any indication as to when the Defendant will evict.
  11. THAT until now Defendant continues to occupy the said premises and has refused to give vacant possession.
  12. THAT I do not wish to further extend the stay of the Defendant's and his family on my property as it is causing prejudice to me, where it is now better for the Defendant to clear the said debt and cultivate the whole land and use the said land for my farming purposes.
  13. THAT I consulted with my lawyers who have advised to seek an order from the Court before evicting the Defendants from the said property.
  14. I seek an order in terms of my motion filed herein.”
8. **AFFIDAVIT IN RESPONSE OF ORIGINATING SUMMONS – 29<sup>th</sup> December, 2023**

“I, RAVNIT RITESH RAJ of Bidesi Road, Naselai Road, Carpenter makes oath and say as follows:

1. THAT I am the Defendant son in this action.
2. THAT in so far as the contents of this Affidavit are within my personal knowledge it is true, it is true to the best of my knowledge, information and belief
3. THAT I have read the Affidavit in Support of Originating Summons of the Plaintiff sworn on the 28<sup>th</sup> August 2023 and I respond to the same accordingly.
4. THAT I agree with paragraphs land 2.

5. THAT I disagree with paragraph 3 and further says that this application to be set aside.
6. THAT I agreed with contents of paragraph 4.
7. THAT I agreed with Paragraph 5 and further states:
  - a. The Plaintiff is my first cousin, the Defendant and the Plaintiffs mother are biological siblings.
  - b. When we were residing at Lakena, the Plaintiff borrowed \$4,200.00 from my family.
  - c. The plaintiff's family was unable to repay the loan, and, as a resolution, agreed to transfer the land to my family in exchange for not repaying the loan.
  - d. The Plaintiffs mother, being the title holder at that time, agreed and consented to this arrangement. We relied on the Plaintiffs mother's assurances, leading my family and me to believe that we had the right to reside on the land.
  - e. We left Lakena, vacated our house, and relocated to the land given to us on or about November 2002.
  - f. There was no written agreement; the entire arrangement was conducted orally.
  - g. We have been residing there continuously for 21 years, during which time we constructed a concrete house, installed utilities, and established concrete infrastructure.
  - h. A constructive trust has been established over the land, asserting that we have developed an equitable interest in the property due to our long-term residence and the actions of the previous proprietor, the Plaintiffs mother.
  - i. When the previous proprietor, the Plaintiffs mother, passed away in 2020, the Plaintiff attempted to evict me and my family from the land where we have been residing.
8. THAT I do not agree with paragraph 6 and further assert that our residence on the land as not unlawful; the Applicant's mother permitted us to inhabit that piece of land. I reiterate the facts presented in paragraph 7(a) to (h).
9. THAT I partially agree with paragraph 7, acknowledging that we received a notice. I emphasize that we have been residing on this land for 21 years and currently have no alternative place to relocate and repeat paragraph 7 (e)((h).
10. THAT I disagree with the contents of Paragraph 8 in the Plaintiffs Affidavit and maintain that it is illogical for any person of sound mind to construct a concrete house with concrete flooring, titles, a concrete driveway, and porch on temporary land given for residence. I restate the facts outlined in paragraph 8 above.

11. THAT I partially disagree with contents in paragraph 9 of the Plaintiffs Affidavit and further say:
  - a. My father the defendant and my mother gave money to the Plaintiff for the payment of the lease.
  - b. However, there are no documents available to prove this, as the Plaintiff made payments under his name, and there are no written agreements.
  - c. Everything was conducted orally and verbally. I emphasize our awareness of this fact and mention that whenever I proposed putting agreements in writing through a lawyer, the Plaintiff ignored it and took advantage of the fact that my parents were not educated.
  - d. My father the defendant passed away on 96 September 2023. Attached herein as annexure RRT -1 is his Death Certificate.
  - e. I repeat the details presented in paragraph 7(b) to (g).
12. THAT in response to paragraph 10, I disagree with the content and further say I did respond to the eviction notice.
13. THAT in response to paragraph 11, I assert that the Plaintiffs attempt to evict us is deemed unconscionable or unfair given the circumstances. I claim on equitable grounds that such an action should not be allowed due to the potential hardship it would cause, especially after our lengthy occupation. I reiterate the details presented in paragraphs 7(g) and (h).
14. THAT in response to paragraph 12, I disagree with its contents pleaded herein and further state:
  - a. Allowing me and my family to stay on the land provides the plaintiff with an opportunity to clear debts and help the Plaintiff cultivate the entire property for farming, benefiting both parties.
  - b. Continuing our stay could be mutually advantageous, and I propose either splitting the lease payment in half or leasing the specific piece of land that we are currently occupying.
15. THAT I have no response to paragraph 13.
16. THAT I disagree with the contents of paragraph 14, and furthermore, I contend that such an order is unwarranted and should not be granted, seeking to have it set aside. There are alternative solutions that could be explored to address the concerns without resorting to eviction, and I pray for the following orders:
  - i. Equitable Estoppel
  - ii. Claim of Constructive Trust
  - iii. Claim of Unconscionability”

**10. AFFIDAVIT IN REPLY (to the Defendants Affidavit in Response) dated 8<sup>th</sup> February, 2024**

“I, RAJESH PRASAD of Naselai Feeder Road, Bau Road, Nausori, Retired hereby make Oath and say as follows:

1. THAT I am the Plaintiff in this matter.
2. THAT I make response to the Defendants Affidavit in Response (herein referred to "the Affidavit in Response") filed on 29<sup>th</sup> December, 2023.
3. THAT in reply to paragraph 5 of the Affidavit in Response, I disagree with the same. I further say that this application should not be set aside and the Defendant should be evicted from my property since I have followed all the procedures to evict the Defendant from the property.
4. THAT in reply to paragraph 6 of the Affidavit in Response, the admission of the Defendant is noted.
5. THAT in reply to paragraph 7 (a) of the Affidavit in Response, I agree to the same.
6. THAT in reply to paragraph 7 (b) of the Affidavit in Response, I totally deny the same. I had never borrowed \$4,200.00 from the Defendant.
7. THAT in reply to paragraph 7 (c) of the Affidavit in Response, I totally deny the same and further state that there was no agreement made to transfer the land to the Defendant.
8. THAT in reply to paragraph 7 (d) of the Affidavit in Response, I totally deny the same. I further state that there was never such agreement made. My mother has legally transferred the said land to me and I further reiterate paragraph 8 of my Affidavit in Support filed on 28 August 2023.
9. THAT in reply to paragraph 7 (e) of the Affidavit in Response, I totally deny the same and state that the Defendant left the Lakena house because the government vacated them from the property to build a road and further reiterate paragraph 8 of my Affidavit in Support filed on 28 August 2023.
10. THAT in reply to paragraph 7 (f) of the Affidavit in Response, I totally deny that there was any agreement (oral or verbal) made to transfer the land to the Defendant.
11. THAT in reply to paragraph 7 (g) of the Affidavit in Response, I agree that the Defendant and his family is residing on my property for almost 21 (twenty-one) years. Further, the Defendants house is not made of concrete, it is made of roofing iron and timber and only the flooring of the house is concrete. The Defendants knew that they were staying on the said property on a temporary basis and as such whatever improvements they did on their house was on their own accord.

12. THAT in reply to paragraph 7 (h) of the Affidavit in Response, I deny the said paragraph and say that if any development on the property was done then the said development was done without any consent or authority. Defendants have failed to provide any evidence of its allegation for Constructive trust. Defendants had the knowledge that the said property does not belong to them, and they are to vacate sometimes hence, if any development they did was based on their own initiative which I do not have any interest. I will say that it's an unlawful development. My late mother has never advised me of such arrangements that has been made.
13. THAT in reply to paragraph 7 (i) of the Affidavit in Response, I state that my mother passed away in 2021 and before her death, my mother used to tell the Defendant and the family on many occasions to evict and vacate from the property and despite that the Defendant did not take heed.
14. THAT in reply to paragraph 8 of the Affidavit in Response, I deny the said paragraph and state that the Defendant and his family are illegally occupying my property. I further reiterate paragraph 8 of my Affidavit in Support filed on 28 August 2023.
15. THAT in reply to paragraph 9 of the Affidavit in Response, the Plaintiff notes that the Defendant acknowledges receiving the eviction notice and further repeats its paragraphs 9, 10, 11 and 12 of this Affidavit. Further, between August and September 2023, the Defendant (Ravnit) visited my place with one Advisory Counsellor of Naselai Area namely Saten Singh to reconcile and discuss settlement after receiving the eviction notice and during that time the Defendant never mentioned to anyone about me borrowing \$4,200.00.
16. THAT in reply to paragraph 10 of the Affidavit in Response, I disagree with the contents and reiterate that the Defendants house is made of roofing iron and timber and only the flooring is of concrete. I further reiterate that the Defendants were allowed to reside on the said land on a temporary basis and as such whatever improvements they may have made is without our consent and authority and it is done on their own accord. The Defendants were aware that the land does not belong to them and as such they ought not have invested on the said land since they were illegal occupants. I reiterate paragraph 8 of my Affidavit in Support filed on 28 August 2023.
17. THAT in reply to paragraph 11 of the Affidavit in Response, I reiterate paragraph 9 of my Affidavit in Support filed on 28 August 2023 and further respond as follows:
  - i. In reply to paragraph 11 (a) of the Affidavit in Response, the said paragraph is totally denied.
  - ii. In reply to paragraph 11 (b) of the Affidavit in Response, I maintain the fact that the Defendant had not paid any money for the said portion of the land nor paid any money to buy the said land or gave money for the payment of the lease.

- iii. In reply to paragraph 11 (c) of the Affidavit in Response, I totally deny the same. In reply to paragraph 11 (d) of the Affidavit in Response, I agree to the same.
  - iv. In reply to paragraph 11(e), I repeat paragraphs 6, 7, 8, 9, 10, 11 of this Affidavit.
  18. THAT in reply to paragraph 12 of the Affidavit in Response, I reiterate paragraph 10 of my Affidavit in Support filed on 28 August 2023 and state that I did not get any response. I further state that the Defendant had to meet my previous lawyers however, to the best of my knowledge, he did not come.
  19. THAT in reply to paragraph 13 of the Affidavit in Response, I reiterate paragraphs 8 and 11 of my Affidavit in Support filed on 28 August 2023. I further reiterate paragraphs 11 and 12 of this Affidavit.
  20. THAT in reply to paragraph 14 (a) and (b) of the Affidavit in Response, I deny the Defendants offer as I want vacant possession of the said piece of land occupied by the Defendant. Currently, I am the registered proprietor of the land and I wish to utilize the entire piece of land where the Defendant is residing for farming purposes and as such, it is essential for the Defendant to give vacant possession since they are not legal occupants of the land.
  21. THAT in reply to paragraph 15 of the Affidavit in Response, I state that I urgently need the order from the Court to evict the Defendant from the said land which they are illegally occupying.
  22. THAT in response to paragraph 16 of the Affidavit in Response, I totally disagree to the same and further say, the Defendant has failed to establish its claim with evidence and supporting documents and further reiterate paragraph 14 of my Affidavit in Support filed on 28 August 2023.”
11. **SUPPLEMENTARY AFFIDAVIT OF RAVINIT RITESH RAJ dated 29<sup>th</sup> May, 2024**

“I, RAVINIT RITESH RAJ of Bidesi Road, Carpenter make oath and say as follows:

1. THAT I am the Defendant's son in this matter.
2. THAT in so far as the contents of this affidavit are within my personal knowledge is true to the best of my knowledge, information, and belief.
3. THAT the defendant in this matter has passed away on the 9<sup>th</sup> of September 2023, and I am his biological son. Annexed hereto and marked as annexure "RRR-1" is a copy of my Birth Certificate.
4. THAT the predecessor is the Plaintiffs mother, the late Vimla Wati also known as Vimla Wati.
5. THAT the Plaintiffs mother and my father are biological brothers and sisters from the same biological parents. Annexed hereto and marked as annexure "RRR-2" is a copy of their Birth Certificate.

6. THAT a copy of the Water bill is registered at the Defendant's name, however I could not obtain the consent from the Water Authority due to the fact it was Annexed hereto and marked as annexure "RRR-3" is a copy of Water Bills.
7. THAT I humbly pray to this Honorable Court to dismiss the application of the plaintiff.

### **ISSUE**

12. This Court has a duty to determine the pending issue before the court in a just and fair manner in terms of the laws provided for in **ss169, 171 and 172 of the Land transfer Act [Cap 131]**.

### **LAW**

13. The application is filed in terms of **s.169 of the Land Transfer Act [Cap 131]** which provides as follows:

*“The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:*

- a) *the last registered proprietor of the land;*
- b) *a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*
- c) *lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.”*

14. Pursuant to **section 172 of the Act** the onus is on the Defendant to show cause as to why he refuses to give up possession to the Plaintiff and why an order for possession should not be made against him.

15. The Plaintiff is the **registered owner** as a **Lessee** in this instant case. The term “**Lessee**” is defined as proprietor of a Lease or sub lease in the Land Transfer Act. Therefore, the term “**Lessee**” follows within the ambits of **section 169** application.

16. In the case of **Ram Narayan v Moti Ram (Civ. App. No. 16/83)** Gould J.P. said-

*“... the summary procedure has been provided in the Land Transfer Act and, where the issues involved are straightforward, and particularly where there are no complicated issues of fact, a litigant is entitled to have his application decided in that way.”*

17. The procedure under **s.169** is governed by **sections 171 and 172 of the Land Transfer Act (Cap 131)** respectively which stipulates as follows:-

*"s.171. On the day appointed for the hearing of the Summons, if the person summoned does not appear, then upon proof to the satisfaction of the Judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the Plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment."*

*s.172. If a person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit."*

**(Underline is mine for emphasis)**

18. As far as the requirements in terms of **section 172** are concerned, the Supreme Court in the case of ***Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87*** at p2) said as follows and it is pertinent:

*"Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right must be adduced."*

19. The requirements of **section 172** have been further elaborated by the Fiji Court of Appeal in ***Ajmat Ali s/o Akbar Ali v Mohammed Jalil s/o Mohammed Hanif (Action No. 44 of 1981 – judgment 2.4.82)*** where the court said:

*"It is not enough to show a possible future right to possession. That is an acceptable statement as far as it goes, but the section continues that if the person summoned does show cause the judge shall dismiss the summons; but then are added the very wide words "or he may make any order and impose any terms he may think fit" These words must apply, though the person appearing has failed to satisfy the judge, and indeed are often applied when the judge decides that an open court hearing is required. We read the section as empowering the judge to make any order that justice and the circumstances require. There is accordingly nothing in section 172 which requires an automatic order for possession unless "cause" is immediately shown. (**Emphasis added**)*

20. In ***Premji v Lal [1975] FJCA 8; Civil Appeal No 70 of 1974 (17 March 1975)*** the Court of Appeal said:

*'These sections and equivalent provisions of the Land (Transfer and Registration) Ordinance (Cap. 136-1955 Laws of Fiji) have been considered in a number of cases in this court and the Supreme Court. In *Jamnadas & Co. Ltd. v. Public Trustee and Prasad Studios Ltd. (Civil Appeal No. 39 of 1972 - unreported)* this court said –*

*'Under Section 172 of the Act the Judge is required to dismiss the summons if the respondent proves to his satisfaction a right to possession ...'*

21. Under **Section 172 of the Act** the judge is empowered to dismiss the summons if the respondent proves to his satisfaction that he has a valid defence, a right to possession, locus standi and or a licence. It further provides that a judge may make any order and impose any terms that he may think fit. The dismissal of the summons is not to prejudice the right of a Plaintiff to take any other proceedings to which he may be otherwise entitled.

## **ANALYSIS**

22. The issues for this court to determine is whether the Plaintiff is entitled to the vacant possession of the Crown Lease No. 22598, situated at Bidesi Road, Naselai, Nausori and whether the Defendant, his family and any other persons residing on that said portion of land is to show cause as to why an order for immediate vacant possession of the Crown Lease No. 22598, situated at should not be made against the Defendant, his family and others.
23. In this case, the Plaintiffs must first comply with the requirements of **section 169 of the Land Transfer Act cap 131**, which are stated hereunder as follows-
  - a) *The first requirement or the first limb of section 169 is that the applicant must be the last registered proprietor of the subject land.*
  - b) *The second is that the applicant be a lessor with power to re-enter where the lessee or tenant is in arrears; and*
  - c) *The third is where a lessor against a lessee or tenant where a legal notice has been given or the term of the lease has expired. The second and third limb of section 169 does not appear to apply in that the defendant is not the plaintiff's tenant who is in arrears and/or the term of the lease has expired.*

**(Underline for emphasis)**

24. In this instance, **the first limb of s169 applies; the plaintiff is the last registered proprietor** of the Crown Lease No. 22598 situated at Bidesi Road, Naselai Road, Nausori.
25. In this respect the plaintiff has annexed in his affidavit a certified true copy of the Crown Lease No. 22598 which clearly shows that the Crown Lease was transferred and registered to the Plaintiff on 17/03/2020 at 12.12pm.
26. After the Plaintiff has established the **first limb test of section 169** that is that the Plaintiff is the **registered proprietor** of the Crown Lease No. 22598 situated at Bidesi Road, Naselai Road, Nausori, then the **Defendant** bears the **onus of showing cause** as to why **vacant possession** should not be granted to the **Plaintiff**.

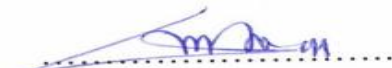
27. Pursuant to *section 172 of the [Land Transfer Act Cap 131](#)*, **Defendant No. 1** needs to satisfy this court on affidavit evidence that he has a right to possession. (Case of **Muthusami v Nausori Town Council** F.C.A. 23/86 refers).
28. There is no need to prove conclusively a **right to possession** and it is sufficient for the **Defendant** to prove that there is **some tangible evidence** establishing the existence of a right or of an **arguable defence**. (Case No. 152 of 1987- **Morris Hedstrom Ltd v Liaquat Ali** refers).
29. The Defendant's son Ravinit Ritesh Raj has filed affidavit dated 29<sup>th</sup> December, 2023 on behalf of his father, Raj Kumar, the Defendant who passed away on 9<sup>th</sup> September, 2023. (Death Certificate annexed).
30. In his Affidavit In Reply, he has stated in paragraph 7 (a) to (i) that his father, the Defendant and the Plaintiff's mother are biological siblings. He alleged that the Plaintiff's family were unable to repay a loan borrowed \$4, 200.00 from his family. The Plaintiff's mother was the Title holder at that time. The latter made arrangement for them to vacate their house in Lakena and relocate to a piece of land given to them in November, 2002. They relied on the Plaintiff's mother assurance that they had the right to reside on that land. He further states that they had continuously lived on that land for 21 years and had constructed a concrete house and installed utilities. The Plaintiff's mother passed away in 2020 and the Plaintiff attempted to evict them from the said land.
31. In paragraph 11 (c ) of his Affidavit, the deponent further states that everything was conducted orally and verbally. There was no agreement in writing.
32. *Sections 39-42 of the [Land Transfer Act](#)*, and under the *Torrens system* of land registration which operates in Fiji, the title of the registered proprietor is indefeasible unless actual fraud is proved. (Case of **Subramani v Sheela [1982] FJCA 11; [1982] 28 FLR 82 (2 April 1982); Assets Company Ltd v Mere Roihi [1905] UKLawRp AC 11; [1905] AC 176 at p. 210; Fels v Knowles 26 N.Z.L.R. 608, at p 620** refers).
33. *Section 39(1) of the [Land Transfer Act](#)* simply states that a **registered title** is deemed paramount and is not affected or defeated by an unregistered interest except in case of **fraud**.
34. Upon reading the Plaintiff and the Defendant's Affidavits, the court note that the Crown Lease No. 22598 was registered on 22 August, 2019 at 11.02am and leased for 99 years to one VIMLA WATI aka VILMA WATI of Vucimaca, Nausori. Then on 17 March, 2020 at 12.12pm it was transferred to the Plaintiff namely RAJESH PRASAD. There is no indication from the Title that the said piece of land was transferred to the Plaintiff upon the death of his mother.
35. Bearing in mind the above, I find that the Plaintiff is the registered **proprietor** of the Crown Lease No. 22598 being at Bidesi Road, Naselai, Nausori. The Plaintiff, therefore has the locus standi to bring this action against the Defendant seeking an order for vacant possession.

36. The Defendant was served with an **Eviction Notice** on 30 August 2022 and subsequently served with an **Originating Summons** seeking an order for **Vacant Possession** on **8 September 2023 at 4.00pm**, as per the requirement of the law.
37. The **Defendant** has failed to show any cause including *a right to possession* or has *tangible evidence establishing a right or* adduced in terms of *section 172 of the [Land Transfer Act, Cap 131](#)*.
38. There is accordingly nothing in *section 172* which requires an automatic order for possession unless "**cause**" is immediately shown.

### **FINAL ORDERS**

39. Following are the final orders of this court.
- i. THAT the **Defendant and his family or any other persons** to give vacant possession to the **Plaintiff the Crown Lease No. 22598** being at **Bidesi Road, Naselai, Nausori** in one months' time, on or before **26 August, 2025**.
  - ii. **Fiji Police** to provide all assistance necessary when enforcement of vacant possession is being carried out.
  - iii. Execution is hereby suspended till **26<sup>th</sup> August, 2025**.
  - iv. **Defendant** to pay the **Plaintiff Costs** summarily assessed at **\$1,000**.



  
Waleen M George  
**Acting Puisne Judge**

Dated at **Suva** this **25<sup>th</sup> day** of July, 2025

### **Solicitors:**

*Amrit Chand Lawyers for the Plaintiff*  
*Lazel Lawyers for the Defendant*